

August 23, 2022

Submitted via electronic mail

# Re: Supplemental Briefing for August 25 DGO 9.01 Working Group

TO END BIASED STOPS

Dear Acting-President Cindy Elias, Comm. Max Carter-Obserstone, Comm. Kevin Benedicto, and Working Group Members:

The Coalition to End Biased is providing supplemental research to support the revisions to the current DGO under consideration. Please find our changes and the supporting materials below. We look forward to a robust discussion in two days.

## Section 9.01.01—Expand the Purpose Statement

The goals of this General Order is-are to reduce the racial disparities in stops and searches, reduce racial bias in the enforcement of our traffic laws, and in particular, to curtail the use of pretextual stops. These stops—which use the traffic codes as a pretext to conduct stops and searches absent any concrete evidence of criminal wrongdoing—are disproportionately carried out against people of color and harm public safety by increasing violent, unnecessary police interactions and provide no demonstrable public safety benefit. Limiting this ineffectual practice will free up valuable resources to focus on strategies proven to stop and prevent crime. Years of unfettered discretion to stop a driver, bicyclist, or pedestrian has resulted in decades of overpolicing communities of color and has directly contributed to the mass incarceration affecting those communities. Academic studies have confirmed as much: police have a green light to engage in racial profiling via traffic stops. To that end, our traffic enforcement efforts should be focused on what matters most: ensuring the safety of our sidewalks and roadways while minimizing the harms caused by over-policing communities of color.

Pretext stops are harmful<sup>1</sup> and ineffective.<sup>2</sup>

<sup>&</sup>lt;sup>1</sup> See, e.g., Policing Project, An Assessment of Traffic Stops and Policing Strategies in Nashville (New York: Policing Project at New York University School of Law, 2018),

https://static1.squarespace.com/static/58a33e881b631bc60d4f8b31/t/5bf2d18d562fa747a554f6b0/15426400142 94/Policing+Project+Nashville+Report.pdf; National Public Radio, *Law Professor on Misdemeanor Offenses and Racism in the Criminal Legal* System (Jun. 12, 2020), <a href="https://news.wbfo.org/post/law-professor-how-misdemeanors-sweep-blacks-criminal-system">https://news.wbfo.org/post/law-professor-how-misdemeanors-sweep-blacks-criminal-system</a>.

<sup>&</sup>lt;sup>2</sup> National Public Radio, *Rethinking Traffic Stops* (Feb. 9, 2019), https://www.npr.org/2019/02/09/692955849/rethinking-traffic-stops#:~:text=Frank%20Baumgartner%20is%20a%20professor,evidence%20the%20stops%20depress%2 Ocrime.

The immediate harm of pretextual traffic stops has been cemented in America's consciousness with memories of unarmed drivers,<sup>3</sup> pedestrians,<sup>4</sup> and bicyclists<sup>5</sup> killed by police when stops for equipment or registration violations turned violent. The less-quantifiable harms are the internalized feeling of persecution people of color absorb,<sup>6</sup> the lack of confidence our communities have in police accounts of interactions with unarmed Black and brown people,<sup>7</sup> and the weariness of living in a society where "driving while Black" is still understood as reason enough for a traffic stop.<sup>8</sup>

Research proves that pretext stops play an outsized role in ensuring that "driving while Black" remains a reality in the United States.<sup>9</sup> Even when controlling for location, time of day, and other factors, Black drivers are still stopped and searched at higher rates than white drivers in the same area because officers use "visible cues to determine the likelihood of criminality . . . that cause an overly great focus on young men of color."<sup>10</sup>

Analysis of nearly 100 million traffic stops found that disparities in stops between Black and white drivers lessen at night because officers are less able to distinguish the race of the driver. 11 Other studies

<sup>&</sup>lt;sup>3</sup> The New York Times, *What to Know About the Death of Daunte Wright* (Feb. 21, 2022), https://www.nytimes.com/article/daunte-wright-death-minnesota.html.

<sup>&</sup>lt;sup>4</sup> The Washington Post, *A Deputy Fatally Shot a Black Homeless Man During a Jaywalking Stop. He Won't Face Charges* (Feb. 12, 2022), <a href="https://www.washingtonpost.com/nation/2022/02/12/kurt-reinhold-orange-county-homeless/">https://www.washingtonpost.com/nation/2022/02/12/kurt-reinhold-orange-county-homeless/</a>.

<sup>&</sup>lt;sup>5</sup> The Guardian, Los Angeles: sheriff's deputies fatally shot Black man stopped for riding bicycle (Sept. 1, 2020), <a href="https://www.theguardian.com/us-news/2020/sep/01/los-angeles-police-shoot-black-man-bicycle">https://www.theguardian.com/us-news/2020/sep/01/los-angeles-police-shoot-black-man-bicycle</a>.

<sup>&</sup>lt;sup>6</sup> The Harvard Gazette, *How unjust police killings damage the mental health of Black Americans*, (May 13, 2021), <a href="https://news.harvard.edu/gazette/story/2021/05/how-unjust-police-killings-damage-the-mental-health-of-black-americans/">https://news.harvard.edu/gazette/story/2021/05/how-unjust-police-killings-damage-the-mental-health-of-black-americans/</a>.

<sup>&</sup>lt;sup>7</sup> The New York Times, *Confidence in Police is at Record Low, Gallup Survey Finds* (Aug. 12, 2020), https://www.nytimes.com/2020/08/12/us/gallup-poll-police.html.

<sup>&</sup>lt;sup>8</sup> See, e.g., Stephen Rushin, et al., An Empirical Assessment of Pretextual Stops and Racial Profiling, (Mar. 2021) Stanford Law Rev. Vol. 73, <a href="https://review.law.stanford.edu/wp-content/uploads/sites/3/2021/03/Rushin-Edwards-73-Stan.-L.-Rev.-637.pdf">https://review.law.stanford.edu/wp-content/uploads/sites/3/2021/03/Rushin-Edwards-73-Stan.-L.-Rev.-637.pdf</a>.

<sup>&</sup>lt;sup>9</sup> Ibid.

<sup>&</sup>lt;sup>10</sup> The Washington Post, *What data on 20 million traffic stops can tell us about 'driving while* black' (July 17, 2018), <a href="https://www.washingtonpost.com/news/monkey-cage/wp/2018/07/17/what-data-on-20-million-traffic-stops-cantell-us-about-driving-while-black/">https://www.washingtonpost.com/news/monkey-cage/wp/2018/07/17/what-data-on-20-million-traffic-stops-cantell-us-about-driving-while-black/</a>.

<sup>&</sup>lt;sup>11</sup> Pierson, E., Simoiu, C., Overgoor, J. et al, *A large-scale analysis of racial disparities in police stops across the United States*, Nat Hum Behav 4, 736–745 (2020), <a href="https://doi.org/10.1038/s41562-020-0858-1">https://doi.org/10.1038/s41562-020-0858-1</a>.

focused on cities—Los Angeles<sup>12</sup>; Washington, D.C.<sup>13</sup>; Cincinnati<sup>14</sup>; Austin<sup>15</sup>; and Portland<sup>16</sup>—yielded the same results: police disproportionately stop and search Black people. The result is that traffic and pedestrian stops are a "common gateway for funneling over-policed and marginalized" people into the criminal legal system.<sup>17</sup>

San Francisco is not alone, then, when Chief Scott presented CRI updates earlier this year showing that Black people are stopped at a higher rate per capita than any other demographic—9 times the rate of Latinx people in the fourth quarter of 2021<sup>18</sup>—and that Black people are searched 10 times as often as white people.<sup>19</sup>

This disparate treatment is not a recent phenomenon<sup>20</sup> and shows no signs of ending on its own despite more than half a decade of reform efforts. The most recent Quarterly Activity and Data Report for 2022 reflects that even when stops fell by half compared to last year, Black people are still stopped per capita 5 times as often as their white neighbors.<sup>21</sup> These discrepancies do immediate physical harm as well. The population of San Francisco is less than 6% Black, but Black people suffered 40% of the injuries from SFPD interactions.<sup>22</sup>

This violence against Black people is not a mysterious aberration. It is a vestige of hundreds of years of racialized domination and exploitation, of red-lining and segregation, of fearmongering about the "other"—be it another race, nationality, or resident of another city—coming to "our neighborhoods" to cause "trouble."

<sup>&</sup>lt;sup>12</sup> Los Angeles Times, *LAPD searches blacks and Latinos more. But they're less likely to have contraband than whites* (Oct. 8, 2019), https://www.latimes.com/local/lanow/la-me-lapd-searches-20190605-story.html.

<sup>&</sup>lt;sup>13</sup> The Washington Post, *A disproportionate number of D.C. police stops involved African Americans* (Sept. 9, 2019), <a href="https://www.washingtonpost.com/local/public-safety/a-disproportionate-number-of-dc-police-stops-involved-african-americans/2019/09/09/6f11beb0-d347-11e9-9343-40db57cf6abd story.html">https://www.washingtonpost.com/local/public-safety/a-disproportionate-number-of-dc-police-stops-involved-african-americans/2019/09/09/6f11beb0-d347-11e9-9343-40db57cf6abd story.html</a>.

<sup>&</sup>lt;sup>14</sup> The Cincinatti Enquirer, *Editorial: Racial disparities in police stops demands attention* (Dec. 20, 2019), <a href="https://www.cincinnati.com/story/opinion/2019/12/20/editorial-racial-disparities-police-stops-demands-attention/2666685001/">https://www.cincinnati.com/story/opinion/2019/12/20/editorial-racial-disparities-police-stops-demands-attention/2666685001/</a>.

<sup>&</sup>lt;sup>15</sup> http://www.austintexas.gov/edims/pio/document.cfm?id=334984.

<sup>&</sup>lt;sup>16</sup> Oregon Criminal Justice Commission, *Statistical Transparency of Policing Report Per House Bill 2355 (2017)* (Nov. 25, 2019), <a href="https://www.oregon.gov/cjc/CJC%20Document%20Library/STOP">https://www.oregon.gov/cjc/CJC%20Document%20Library/STOP</a> Report Final.pdf.

<sup>&</sup>lt;sup>17</sup> Woods, Jordan Blair, *Traffic Without Police*, Stanford Law Review, Vol. 73, 2021, https://ssrn.com/abstract=3702680.

<sup>&</sup>lt;sup>18</sup> SFPD Collaborative Reform Update: Re-envisioning Policing (March 22, 2022), https://sfgov.legistar.com/View.ashx?M=F&ID=10666028&GUID=D94CE55A-2DD6-482A-B8A0-14BC1949F04E.

<sup>&</sup>lt;sup>19</sup> Jarrett, Will, *SF police 10 times more likely to stop, search Black people than white*, (March 22, 2022), <a href="https://missionlocal.org/2022/03/sfpd-stop-and-searches-are-down-but-black-people-are-still-disproportionately-targeted/">https://missionlocal.org/2022/03/sfpd-stop-and-searches-are-down-but-black-people-are-still-disproportionately-targeted/</a>.

https://abc7news.com/san-francisco-police-sfpd-racial-profiling-traffic-stops/6422281/; https://www.nytimes.com/2016/07/12/us/san-francisco-police-disproportionately-search-african-americans-report-says.html.

<sup>&</sup>lt;sup>21</sup> https://www.sanfranciscopolice.org/sites/default/files/2022-06/SFPDQADR-Quarter12022-20220610.pdf.

<sup>&</sup>lt;sup>22</sup> Narayan, Shwanika, *Study: S.F. ranks worst in the state when it comes to police-caused hospitalization rates for Black*, <a href="https://www.sfchronicle.com/sf/article/police-violence-Black-residents-17272732.php">https://www.sfchronicle.com/sf/article/police-violence-Black-residents-17272732.php</a>.

The disparate treatment borne out in the data is the continuation of that legacy of oppression and a natural consequence of keeping the status quo. The solution is not a matter of which training curriculum SFPD implements or what new officers they hire. We must remove officer discretion from the point of harm by, in part, acknowledging from the start the harm caused by police violence—largely against communities of color.

### Section 9.01.02A—REFINE DEFINITION OF PRETEXT STOP

A. **Pretext Stop.** A member effects a pretext stop where a member uses reasonable suspicion or probable cause of a traffic or code violation as a pretext to initiate a stop motivated by a desire to investigate another unrelated matter crime that is unrelated to that violation.

We cannot limit the definition of "pretext stop" to only the desire to investigate "crime." Often the "matter" being investigated is driving while Black or brown in the wrong neighborhood, a certain person driving a certain kind of car, etc. An officer could use a traffic offense as a pretense to investigate any number of things, not all of which are "crimes."

#### Section 9.01.02B—REFINE DEFINITION OF BIASED STOP

B. **Biased Stop.** A biased traffic or pedestrian stop occurs when is one where there is no matching suspect description and a person's apparent race, color, ethnicity, national origin, age, religion, gender identity or expression, sexual orientation, mental or physical disability, socio-economic status, dress, appearance, or neighborhood taken separately or together is a motivating factor or is given undue weight (in violation of DGO 5.17.III.A.3) in a member's decision to stop a person or vehicle.

### Section 9.01.02C—REFINE DEFINITION OF REASONABLE SUSPICION

C. **Reasonable Suspicion.** Reasonable suspicion is a set of specific facts and circumstances that would lead a reasonable person to believe that a crime is, was, or is about to occur and the person under suspicion is reasonably connected to the crime. Reasonable suspicion to detain is also established whenever there is any violation of the law. Reasonable suspicion cannot be based solely on a hunch or instinct but must be based on existing, articulable facts and circumstances.

## Section 9.01.05 A—PROHIBIT ASKING QUESTIONS UNRELATED TO TRAFFIC STOP

A. In the course of any stop made for an infraction pursuant to the California Vehicle Code or San Francisco Transportation Code, members shall not only ask investigatory questions regarding unrelated to the stop. criminal activity if reasonable suspicion or probable cause for a criminal offense arises during the stop. (Example: If, during a routine traffic stop, officers see a firearm in plain view in the vehicle, they may ask investigatory questions about criminal activity).

Questions such as "do you live here", "have you ever been arrested", "what's your address", or "what's in the bag" are unnecessary to completing the primary purpose of the traffic stop: to cite a driver, cyclist, or a pedestrian for an *infraction*—the lowest level criminal violation. These questions unduly incentivize officers to conduct traffic stops for infractions to fish for evidence of unrelated criminal

activity. Questions such as these extend the duration of a traffic stop and can significantly harm a person's liberty, psychological, physical, and privacy interests.

No exceptions to this policy should exist. Doing so allows officers to weaponize the exception to the rule since reasonable suspicion is a nebulous concept and an arbitrarily low bar that sweeps in too much innocent conduct. For example, nervous movement (or "furtive gestures") too often unfairly constitutes elements of reasonable suspicion when many, especially people of color, are simply – rightfully – nervous of a police encounter due to a history of being profiled by police. Asking unrelated questions after a stop only increases this nervousness and contributes to the perception that the stop was motivated not by traffic safety, but by a desire to question the driver, bicyclist, or pedestrian about matters unrelated to the basis for the traffic stop.

A ready alternative also exists that makes asking these questions superfluous: probable cause for an arrest—for example, based on illegal items in plain view or evidence of another crime—permits an officer to conduct a separate, concurrent investigation of that offense. To that end, the Penal Code already prohibits carrying a loaded or unloaded gun in a car.<sup>24</sup>

### 9.01.05B—PROHIBIT CONSENT SEARCHES ENTIRELY

B. In the course of any stop for an infraction made pursuant to the California Vehicle Code or San Francisco Transportation Code, members shall not only ask for permission to conduct a consent search of a person or vehicle if reasonable suspicion or probable cause for a criminal offense arises during the stop.

If an officer can search without asking permission, they need not ask. If they are not able to search without asking permission, they should not ask. Neither decorum nor politeness requires asking consent if an officer has authority to search the person—an officer could just as easily say "Please step aside I am going to search your car" instead of "Could you please step aside and let me search your car." A direct statement removes ambiguity.

More broadly, banning consent searches is important because no objective criteria exist for when an officer can conduct a consent search.<sup>25</sup> Further, baseless searches are open-ended and have little practical limits. Because of the inherently coercive nature of a traffic stop and the fear of reprisals a refusal might engender, few refuse officers' requests. One study in 2012 found that over 95% of those asked to consent to a search did so<sup>26</sup> in part because "pressures to comply are underappreciated and

<sup>25</sup> 2022 RIPA Board Report at 99, https://oag.ca.gov/system/files/media/ripa-board-report-2022.pdf.

<sup>&</sup>lt;sup>23</sup> Justin T. Pickett, et al., *The American Racial Divide in Fear of the Police*, Criminology (Jan. 8, 2022), https://onlinelibrary.wiley.com/doi/full/10.1111/1745-9125.12298.

<sup>&</sup>lt;sup>24</sup> Pen. Code §26350.

<sup>&</sup>lt;sup>26</sup> Janice Nadler, et. al., *The Language of consent in Police Encounters* (2012) at 328, <a href="https://www.law.northwestern.edu/faculty/fulltime/nadler/nadler-trout-language-of-consent-proof2.pdf">https://www.law.northwestern.edu/faculty/fulltime/nadler-trout-language-of-consent-proof2.pdf</a>.

consent is overstated."<sup>27</sup> A decade later, the 2022 RIPA Report found precisely the same result: 95% of individuals consented to a search when asked by an officer.<sup>28</sup>

Courts reinforce this dynamic by denying the reality of how officers procure "consent" and instead analyze whether the consent was unduly coercive. Similarly, courts rely on a "reasonable person" standard that ignores the reality that Black people—and Black men in particular—have obvious, historical reasons for fearing the police and thus routinely accede to a search despite those fears.<sup>29</sup> These searches are baseless, should not be asked for, and cannot properly be called "consent searches."

Baseless searches are "essentially random searches (at best) and are only marginally effective when compared to other readily available and less-intrusive investigative tactics." Baseless searches also disproportionately impact Black and Latinx people. In 2019 before much of the City was shuttered because of the pandemic, SFPD officers conducted more baseless searches on Black and Latinx people than on whites. That trend remained consistent through 2020 and 2021.

Disproportionately conducting baseless searches on Black and Latinx people suggests that SFPD officers subject those groups to higher levels of scrutiny despite recovering contraband at very similar rates. Data from the 2022 RIPA report supported this conclusion:<sup>33</sup>

The 2019 and 2020 RIPA data show that Black and Hispanic/Latine(x) individuals are asked for consent to search at higher rates than White individuals. While Black, Hispanic/Latine(x), and Multiracial individuals were searched at higher rates for consent only searches as compared to all other racial/ethnic groups, these consent only searches resulted in lower rates of discovery of contraband (8.5%, 11.3%, and 13.0% respectively) than searches of all other racial/ethnic groups.

<sup>&</sup>lt;sup>27</sup> Roseanna Sommers & Vanessa K. Bohns, *The Voluntariness of Voluntary Consent: Consent Searches and the Psychology of Compliance*, (2019) 128 Yale Law J. 7, 1962.

<sup>&</sup>lt;sup>28</sup> 2022 RIPA Board Report at 100, https://oag.ca.gov/system/files/media/ripa-board-report-2022.pdf.

<sup>&</sup>lt;sup>29</sup> See <a href="https://www.pbs.org/newshour/politics/two-thirds-of-black-americans-dont-trust-the-police-to-treat-them-equally-most-white-americans-do;">https://www.latimes.com/archives/story/2021-10-03/the-blame-must-be-shared-many-blacks-fear-police-are-the-enemy;</a> <a href="https://www.propublica.org/article/yes-black-america-fears-the-police-heres-why;">https://www.theguardian.com/commentisfree/2021/oct/25/black-friends-fear-calling-police-racism;</a> <a href="https://www.vox.com/2020/6/17/21292046/black-people-abolish-defund-dismantle-police-george-floyd-breonna-taylor-black-lives-matter-protest;">https://www.vox.com/2020/6/17/21292046/black-people-abolish-defund-dismantle-police-george-floyd-breonna-taylor-black-lives-matter-protest;</a> <a href="https://www.usatoday.com/story/news/nation/2020/06/13/mistrust-police-minority-communities-hesitant-call-police-george-floyd/5347878002/">https://www.themarshallproject.org/2021/03/22/stranger-fruit-black-mothers-and-the-fear-of-police-brutality</a>.

<sup>&</sup>lt;sup>30</sup> Kelly, *Race, Cars and Consent: Reevaluating No-Suspicion Consent Searches* (2016) 2 DePaul J. for Soc. Sciences 255, https://core.ac.uk/download/pdf/232972396.pdf.

<sup>&</sup>lt;sup>31</sup> https://www.sanfranciscopolice.org/sites/default/files/2021-12/SFPDQADRReportQ3-20211209.pdf at 13. <sup>32</sup> lbid.

<sup>&</sup>lt;sup>33</sup> 2022 RIPA Board Report at 100 & 113, <a href="https://oag.ca.gov/system/files/media/ripa-board-report-2022.pdf">https://oag.ca.gov/system/files/media/ripa-board-report-2022.pdf</a>.

The Stanford Open Policing Project concluded based on statistical analysis that SFPD officers have required less suspicion to search Black and Latinx drivers than white drivers and that this "double standard is evidence of discrimination."<sup>34</sup> Other analyses have reached the same conclusion.<sup>35</sup>

Other jurisdictions have responded to problems of baseless searches simply by eliminating them. For example, the Chief of Police in Hamden, CT prohibited consent searches and saw in response the racial disparity of all stop data decrease and the yield rate increase from 7% to 80%. <sup>36</sup> Perhaps following suit, the Connecticut legislature prohibited consent searches during a traffic stop based on a motor vehicle violation. <sup>37</sup> Six other jurisdictions, including the California Highway Patrol for a time, have banned them.

Because consent searches are not voluntary in any true sense, are ineffective, and perpetuate overpolicing of Black and Latinx people, this policy must ban consent searches.

### 9.01.05C—PROHIBIT ASKING ABOUT PROBATION AND PAROLE STATUS ENTIRELY.

C. In the course of any stop for an infraction made pursuant to the California Vehicle Code or San Francisco Transportation Code, members shall not only ask if a person is on probation or parole if reasonable suspicion or probable cause for a criminal offense arises during the stop.

Asking questions related to probation or parole is offensive to many people of color who presume officers ask about this status because of their race or ethnicity. It is no wonder then why people of color—and Black people in particular—are loath to encounter police: one study found that nearly half of Black respondents to a survey question preferred to be robbed or burglarized than to have unprovoked contact with officers.<sup>38</sup>

Officers ask the question to skirt the Fourth Amendment's search requirement precisely because they have no basis to believe that the person is carrying contraband. Study after study shows that

<sup>34 &</sup>lt;a href="https://openpolicing.stanford.edu/findings/">https://openpolicing.stanford.edu/findings/</a>.

<sup>&</sup>lt;sup>35</sup> See, e.g., The Guardian, *Black people in California are stopped far more often by police, major study proves* (Jan.

<sup>2, 2020), &</sup>lt;a href="https://www.theguardian.com/us-news/2020/jan/02/california-police-black-stops-force">https://www.theguardian.com/us-news/2020/jan/02/california-police-black-stops-force</a>; New York Times, The Disproportionate Risks of Driving While Black (Oct. 24, 2015),

https://www.nytimes.com/2015/10/25/us/racial-disparity-traffic-stops-driving-black.html; San Francisco Chronicle, Racial Disparities in SF traffic searches raise concerns of bias (Apr. 8, 2016),

https://www.sfchronicle.com/crime/article/Racial-disparities-in-SF-traffic-searches-raise-7235690.php; Vanity Fair, What the Data Really Says About Police and Racial Bias (Jul. 14, 2016),

https://www.vanityfair.com/news/2016/07/data-police-racial-bias.

<sup>&</sup>lt;sup>36</sup> Racial Identity Profiling Advisory Board, *Annual Report 2021* at footnote 155, https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/ripa-board-report-2021.pdf.

<sup>&</sup>lt;sup>37</sup> Eyewitness News 3, *Controversial police accountability law goes into effect today* (Oct. 1, 2020), <a href="https://www.wfsb.com/news/controversial-police-accountability-law-goes-into-effect-today/article-8cfde84a-03f2-11eb-a6e0-8b1e10ca9e56.html">https://www.wfsb.com/news/controversial-police-accountability-law-goes-into-effect-today/article-8cfde84a-03f2-11eb-a6e0-8b1e10ca9e56.html</a>.

<sup>&</sup>lt;sup>38</sup> Justin T. Pickett, et al., *The American Racial Divide in Fear of the Police*, Criminology (Jan. 8, 2022), <a href="https://onlinelibrary.wiley.com/doi/full/10.1111/1745-9125.12298">https://onlinelibrary.wiley.com/doi/full/10.1111/1745-9125.12298</a>.

probationers/parolees do better with less intensive supervision.<sup>39</sup> The 2022 RIPA Report articulates a persuasive case for curbing this practice (internal citations omitted)<sup>40</sup>:

A 2018 Justice Center of Council of State Governments study estimates California spends \$2 billion annually to re-incarcerate people for supervision violations, and \$235 million per year on technical violations alone, 'such as missing a drug rehab appointment or socializing with a friend who has a criminal record.' Community supervision is not only costly, but it significantly contributes to mass incarceration by sending people back to prison for minor or technical rule violations. Experts have described this as 'a tripwire that can trigger a vicious cycle of incarceration for people under supervision for administrative rule violations that would rarely lead someone not under supervision into prison.'

Research has shown that mass incarceration can decimate communities of color by socially and economically isolating individuals from their families and communities during and after their incarceration; given their prevalence, technical violations are likely a contributing factor. One way to help break this cycle is to stop making assumptions that an individual is engaged in criminal activity simply because they may have a criminal history.

Other jurisdictions such as Berkeley and Oakland have taken steps to end or significantly limit the practice in all interactions—not just during traffic stops.<sup>41</sup> This policy should ban asking questions related to probation and parole entirely.

Thank you for taking on this issue, and we look forward to working with you to make the policy as strong as it needs to be. For questions about our position, please write to Wesley Saver at wsaver@glide.org.

Sincerely,

Accountability Associates
ACLU of Northern California
Advancing Justice - Asian Law Caucus

<sup>39</sup> Jennifer Doleac, *Study After Study Shows Ex-Prisoners Would Be Better Off Without Intense Supervision* (Jul. 2, 2018), <a href="https://www.brookings.edu/blog/up-front/2018/07/02/study-after-study-shows-ex-prisoners-would-be-better-off-without-intense-supervision/">https://www.brookings.edu/blog/up-front/2018/07/02/study-after-study-shows-ex-prisoners-would-be-better-off-without-intense-supervision/</a>.

<sup>&</sup>lt;sup>40</sup> Racial Identity Profiling Advisory Board, *Annual Report 2022* at 118, <a href="https://oag.ca.gov/system/files/media/ripa-board-report-2022.pdf">https://oag.ca.gov/system/files/media/ripa-board-report-2022.pdf</a>.

<sup>&</sup>lt;sup>41</sup>Ali Tadayan, New Oakland policy limits when parolees can be searched without a warrant, East Bay Times (Jul. 10, 2019), <a href="https://www.eastbaytimes.com/2019/07/10/new-oakland-police-policy-limits-warrantless-searches-on-parolees/#:~:text=Police%20will%20not%20be%20allowed%20to%20conduct%20a%20search%20without,the%20 officer%20or%20citizen%20safety.%E2%80%9D; <a href="https://berkeleyca.gov/sites/default/files/legislative-body-meeting-attachments/2022-07-13.SuppMaterials.2.Policy.311.6.Warrantless.Searches.pdf">https://berkeleyca.gov/sites/default/files/legislative-body-meeting-attachments/2022-07-13.SuppMaterials.2.Policy.311.6.Warrantless.Searches.pdf</a>.

AIDS Legal Referral Panel

All of Us or None

Arab Resource and Organizing Center

Calle 24 Latino Cultural District

Chinatown Community Development Center

Clarence Dyer & Cohen

Coalition on Homelessness, San Francisco

Community Forward SF

Community Resource Initiative

Community United Against Violence (CUAV)

Council on American-Islamic Relations, San Francisco Bay Area Office

Critical Resistance Oakland

**Curry Senior Center** 

Day Moon

**DOPE Project** 

Ella Baker Center for Human Rights

**End Poverty Tows Coalition** 

**Episcopal Community Services** 

**Eviction Defense Collaborative** 

Faith in Action Bay Area

**GLIDE** 

Haight Ashbury Neighborhood Council

HealthRIGHT 360

**Homeless Prenatal Program** 

HomeRise

**Hospitality House** 

Islamophobia Studies Center

Justice for Chinedu

Lawyers' Committee for Civil Rights of the San Francisco Bay Area

League of Women Voters of San Francisco

Legal Aid at Work

Legal Services for Children

Legal Services for Prisoners with Children

No New SF Jail Coalition

**PODER** 

San Francisco AIDS Foundation

San Francisco Bicycle Coalition

San Francisco Hepatitis C Task Force

San Francisco Lowrider Council

San Francisco Muslim Community Center

San Francisco Public Defender

San Francisco Pretrial Diversion Project

San Francisco Rising

San Francisco Taxpayers for Public Safety

San Francisco Transit Riders

Secure Justice

Silicon Valley De-Bug

Skywatchers

SPUR

**Sunset Youth Services** Support Life Foundation Tenderloin/SoMa/West SoMa Community Planners Tenderloin Traffic Safety Task Force The Gubbio Project

Transgender, Gender-Variant, & Intersex Justice Project

Walk San Francisco

Western Center on Law & Poverty

Western Regional Advocacy Project

Yemeni Alliance

Yemeni American Association

Young Women's Freedom Center

Cc: San Francisco Police Commission via <a href="mailto:sfgov.org">sfgov.org</a>